

Fiscal Year 2007 Performance Contract

General Provisions

(Core/Vendor)

ARTICLE I COMPLIANCE AND REPORTING

Section 1.01 **Compliance with Statutes and Rules.** Contractor shall comply, and shall require its subcontractor(s) to comply, with the requirements set forth in the Department's rules of general applicability and other applicable statutes and rules as such statutes and rules currently exist and as they may be lawfully amended. The Department rules are set forth in the Texas Administrative Code, Title 25 (Rules). Where applicable, federal statutes and regulations, including federal grant requirements applicable to funding sources, shall apply to this Contract. To the extent this Contract imposes a higher standard or additional requirements beyond those required by applicable statutes, regulations or the Rules, the terms of the Contract shall control.

Section 1.02 **Compliance with Requirements of Solicitation Document.** Except as specified in these General Provisions or the Program Attachment(s), Contractor shall comply with the requirements, eligibility conditions, assurances, certifications and program requirements of the Solicitation Document (including any revised or additional terms agreed to in writing by Contractor and DSHS prior to execution of this Contract) for the duration of this Contract or any subsequent renewals. The Parties agree that the Department has relied upon the Contractor's response to the Solicitation Document. The Parties agree that any misrepresentation contained in the Contractor's response to the Solicitation Document shall constitute a breach of this Contract.

Section 1.03 **Reporting.** Contractor shall submit reports in accordance with the reporting requirements established by the Department. Contractor shall provide any other information required by the Department. Failure to submit a required report or additional requested information by the due date specified in the Program Attachment(s) or upon request constitutes a breach of contract, may result in delayed payment, and may adversely affect evaluation of Contractor's future contracting opportunities with the Department. Contractor shall submit reports and additional information requested by DSHS in the format required by DSHS.

Section 1.04 **Immunization Reporting.** If Contractor provides immunizations, Contractor shall comply with all immunization reporting guidelines and requirements set forth in Health and Safety Code, Chapter 161, Subchapter A. Contractor shall include this provision in any subcontract with subcontractors that provide immunizations.

Section 1.05 **Client Eligibility.** Where applicable, financial eligibility criteria, financial assessment procedures, and standards developed by the Department shall be utilized by Contractor to determine client eligibility.

Section 1.06 **Federal and State Laws, Rules and Ordinances.** Contractor shall comply with all applicable federal and state statutes, rules and regulations, including but not limited to Office of Management and Budget (OMB) Circulars cost principles and Uniform Grant

Management Standards (UGMS), as applicable where costs are used in determining the appropriate price.

Section 1.07 **Applicable Contracts Law and Venue for Disputes.** Regarding all issues related to contract formation, performance, interpretation, and any issues that may arise in any dispute between the Parties, the Contract shall be governed by, and construed in accordance with, the laws of the State of Texas. In the event of a dispute between the Parties, venue for any suit shall be Travis County, Texas.

Section 1.08 **Statutes and Standards of General Applicability.** It is Contractor's responsibility to review and comply with all applicable statutes, rules, regulations, executive orders and policies. Contractor shall carry out the terms of this Contract in a manner that is in compliance with the provisions set forth below. To the extent such provisions are applicable to Contractor, Contractor agrees to comply with the following:

- a) The following statutes and DSHS policy that collectively prohibit discrimination on the basis of race, color, national origin, limited English proficiency, sex, sexual orientation (where applicable), disabilities, age, substance abuse or religion: 1) Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. §§ 2000d et seq.; 2) Title IX of the Education Amendments of 1972, 20 U.S.C.A. §§ 1681-1683, and 1685-1686; 3) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794(a); 4) the Americans with Disabilities Act of 1990, 42 U.S.C.A. §§ 12101 et seq.; 5) Age Discrimination Act of 1975, 42 U.S.C.A. §§ 6101-6107; 6) Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, 42 U.S.C.A. § 290dd (b)(1); 7) 45 CFR Parts 80, 84, 86 and 91; 8) TEX. LAB. CODE. ch. 21; and 9) DSHS Policy AA-5018, Non-discrimination Policy for DSHS Programs;
- b) Drug Abuse Office and Treatment Act of 1972, 21 U.S.C.A. §§ 1101 et seq., relating to drug abuse;
- c) Public Health Service Act of 1912, §§ 523 and 527, 42 U.S.C.A. § 290dd-2, and 42 C.F.R. pt. 2, relating to confidentiality of alcohol and drug abuse patient records;
- d) Title VIII of the Civil Rights Act of 1968, 42 U.S.C.A. §§ 3601 et seq., relating to nondiscrimination in housing;
- e) Immigration Reform and Control Act of 1986, 8 U.S.C.A. § 1324a, regarding employment verification;
- f) Pro-Children Act of 1994, 20 U.S.C.A. §§ 6081-6084, regarding the non-use of all tobacco products;
- g) National Research Service Award Act of 1971, 42 U.S.C.A. §§ 289a-1 et seq., and 6601 (P.L. 93-348 and P.L. 103-43), as amended, regarding human subjects involved in research;
- h) Hatch Political Activity Act, 5 U.S.C.A. §§ 7321-26, which limits the political activity of employees whose employment is funded with federal funds;
- i) Fair Labor Standards Act, 29 U.S.C.A. §§ 201 et seq., and the Intergovernmental Personnel Act of 1970, 42 U.S.C.A. §§ 4701 et seq., as applicable, concerning minimum

wage and maximum hours;

j) TEX. GOV'T CODE ch. 469 (Supp. 2004), pertaining to eliminating architectural barriers for persons with disabilities;

k) Texas Workers' Compensation Act, TEX. LABOR CODE, chs. 401-406 28 TEX. ADMIN. CODE pt. 2, regarding compensation for employees' injuries;

l) The Clinical Laboratory Improvement Amendments of 1988, 42 USC § 263a, regarding the regulation and certification of clinical laboratories;

m) The Occupational Safety and Health Administration Regulations on Blood Borne Pathogens, 29 CFR § 1910.1030, or Title 25 Tex. Admin Code ch. 96 regarding safety standards for handling blood borne pathogens;

n) Laboratory Animal Welfare Act of 1966, 7 USC §§ 2131 et seq., pertaining to the treatment of laboratory animals;

o) Environmental standards pursuant to the following: 1) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, 42 USC §§ 4321-4347 and Executive Order 11514 (35 Fed. Reg. 4247), "Protection and Enhancement of Environmental Quality;" 2) Notification of violating facilities pursuant to Executive Order 11738 (40 CFR Part 32), "Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal Contracts, Grants, or Loans;" 3) Protection of wetlands pursuant to Executive Order 11990, 42 Fed. Reg. 26961; 4) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 Fed. Reg. 26951 and, if applicable, flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234); 5) Assurance of project consistency with the approved State Management program developed under the Coastal Zone Management Act of 1972, 16 USC §§ 1451 et seq; 6) Conformity of federal actions to state clean air implementation plans under the Clean Air Act of 1955, as amended, 42 USC §§ 7401 et seq.; 7) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, 42 USC §§ 300f-300j; 8) Protection of endangered species under the Endangered Species Act of 1973, 16 USC §§ 1531 et seq.; 9) Conformity of federal actions to state clean air implementation plans under the Clean Air Act of 1955, 42 USC §7401 et seq.; 10) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, 42 USC §§300f-330j; 11) Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting certain rivers system; and 12) Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) prohibiting the use of lead-based paint in residential construction or rehabilitation;

p) Intergovernmental Personnel Act of 1970 (42 USC §§4278-4763 regarding personnel merit systems for programs specified in Appendix A of the federal Office of Program Management's Standards for a Merit System of Personnel Administration (5 C.F.R. Part 900, Subpart F);

q) Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), relating to fair treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs;

r) Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally-assisted construction subagreements;

- s) National Historic Preservation Act of 1966, §106 (16 U.S.C. § 470), Executive Order 11593, and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a-1 et seq.) regarding historic property to the extent necessary to assist DSHS in complying with the Acts;
- t) Financial and compliance audits in accordance with Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations;" and
- u) requirements of any other applicable statutes, executive orders, regulations and policies.

If this Contract is funded by a grant, additional requirements found in the Notice of Grant Award are imposed on Contractor and incorporated herein by reference.

Section 1.09 General Provisions Applicable to Interagency and Interlocal Contracts. Certain sections or portions of sections of these General Provisions shall not apply to Contractors that are State agencies or units of local government; and certain additional provisions shall apply to such Contractors.

- a) The following sections or portions of sections of these General Provisions shall not apply to interagency or interlocal contracts:
 - 1) Hold Harmless;
 - 2) Independent Contractor (delete the third sentence in its entirety; delete the word "employee" from the fourth sentence; the remainder of the section applies); and
 - 3) Liability Coverage.
- b) The following additional provisions shall apply to interagency contracts:
 - 1) This Contract is entered into pursuant to the authority granted and in compliance with the provisions of the Interagency Cooperation Act, Gov. Code Chapter 771.
 - 2) The parties hereby certify that (1) the services specified are necessary and essential for the activities that are properly within the statutory functions and programs of the effected agencies of State government; (2) the proposed arrangements serve the interest of efficient and economical administration of the State government, and (3) the services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Constitution of the State of Texas to be supplied under contract given to the lowest responsible bidder.
 - 3) DSHS certifies that it has the authority to enter into this Contract granted in Health and Safety Code Chapter 1001, and Contractor certifies that it has specific statutory authority to enter into and perform this Contract.
- (c) The following additional provisions shall apply to interlocal contracts:
 - 1) This Contract is entered into pursuant to the authority granted and in compliance with the provisions of the Interlocal Cooperation Act, Gov. Code Chapter 791.
 - 2) Payments made by DSHS to Contractor shall be from current revenues available to DSHS.
 - 3) Each party represents that it has been authorized to enter into this Contract.
- (d) Contractor agrees that Contract Revision Requests, when signed by a duly authorized representative of Contractor, shall be effective as of the effective date specified by the Department, whether that date is prior to or after the date of any ratification by Contractor's governing board.

ARTICLE II SERVICES

Section 2.01 **Education to Persons in Residential Facilities.** If applicable, Contractor shall ensure that all persons, who are housed in Department licensed and/or funded residential facilities and who are twenty-two (22) years of age or younger, have access to educational services as required by TEX. EDUC. CODE § 29.012. Contractor shall notify the local education agency or local early intervention program as prescribed by TEX. EDUC. CODE § 29.012 not later than the third calendar day after the date a person who is twenty-two (22) years of age or younger is placed in Contractor's residential facility.

Section 2.02 **Disaster Services.** In the event of a local, state, or federal emergency, including natural, man-made, criminal, terrorist, and/or bioterrorism events, declared as a state disaster by the Governor, or a federal disaster by the appropriate federal official, Contractor may be called upon to assist DSHS in providing services, as appropriate, in the following areas: community evacuation, health and medical assistance; assessment of health and medical needs; health surveillance; medical care personnel; health and medical equipment and supplies; patient evacuation; in-hospital care and hospital facility status; food, drug, and medical device safety; worker health and safety; mental health and substance abuse; public health information; vector control and veterinary services; and victim identification and mortuary services. Disaster services shall be carried out in the manner most responsive to the needs of the emergency, be cost effective, and be least intrusive on the primary services of the Contractor.

Section 2.03 **Consent to Medical Care.** If Contractor provides medical, dental, psychological or surgical treatment to a minor under this Contract, either directly or through contracts with subcontractors, the treatment of a minor shall be provided only if consent to treatment is obtained pursuant to TEX. FAM. CODE, Chapter 32 relating to consent to treatment of a child by a non-parent or child or pursuant to other state law. If requirements of federal law relating to consent directly conflict with TEX. FAM. CODE, Chapter 32, federal law shall supersede state law.

Section 2.04 **Telemedicine Medical Services.** Contractor shall ensure that if a provider uses telemedicine/telepsychiatry that the services are implemented in accordance with written procedures and using protocol approved by the Contractor's medical director and utilizing equipment that complies with the equipment standards as required by the Department. Procedures of telemedicine service provision must include the following requirements:

- a) clinical oversight by the Contractor's medical director or designated physician responsible for medical leadership;
- b) contraindication considerations for telemedicine use;
- c) qualified staff members to ensure the safety of the individual being served by telemedicine at the remote site;
- d) safeguards to ensure confidentiality and privacy in accordance with state and federal laws;
- e) use by credentialed licensed providers providing clinical care within the scope of their licenses;
- f) demonstrated competency in the operations of the system by all staff members who are involved in the operation of the system and provision of the services prior to initiating the protocol;
- g) priority in scheduling the system for clinical care of individuals;
- h) quality oversight and monitoring of satisfaction of the individuals served; and
- i) management of information and documentation for telemedicine services that ensures timely access to accurate information between the two sites.

ARTICLE III FUNDING

Section 3.01 **Debt to State and Corporate Status.** Pursuant to TEX. GOV'T. CODE § 403.055, the Department will not approve and the State Comptroller will not issue payment to Contractor if Contractor is indebted to the State for any reason, including a tax delinquency. Contractor, if a corporation, certifies by execution of this Contract that it is current and will remain current in its payment of franchise taxes to the State of Texas or that it is exempt from payment of franchise taxes under Texas law (Texas Tax Code §§171.001 *et seq*, as amended). Contractor, if a corporation, further certifies that it is and will remain in good standing with the Secretary of State's office. A false statement regarding franchise tax or corporate status is a material breach of this Contract. If franchise tax payments become delinquent during the Contract term, all or part of the payments under this Contract may be withheld until Contractor's delinquent franchise tax is paid in full.

Section 3.02 **Application of Payment Due.** Contractor agrees that any payments due under this Contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas.

ARTICLE IV PAYMENT METHODS AND RESTRICTIONS.

Section 4.01 **Payment Methods.** Except as otherwise provided by the Special Provisions of this Contract, the payment method for each program shall be one of the following methods:

- (a) cost reimbursement. This payment method is based on an approved budget in the Program Attachment(s) and successful submission of a request for reimbursement;
- (b) unit rate. This payment method is based on the set unit rate stated in the Program Attachment(s) and successful submission of all required forms; or
- (c) fee-for-service. This payment method is based on the agreed fee stated in the Program Attachment(s) and successful submission of all required forms.

Section 4.02 **Billing Submission.** Contractors shall bill the Department in accordance with the Program Attachment(s) in the form and format prescribed by DSHS. Unless

otherwise specified in the Program Attachment(s), Contractor shall submit requests for reimbursement or payment monthly within thirty (30) calendar days following the end of the month covered by the bill.

Section 4.03 **Third Party Payors.** A third party payor is any person or entity who has the legal responsibility for paying for all or part of the services provided, including commercial health or liability insurance carriers, Medicaid, or other federal, state, local, and private funding sources. Except as provided in the Contract, Contractor shall screen all clients and shall not bill the Department for services eligible for reimbursement from third party payors. Contractor shall: (a) enroll as a provider in Children's Health Insurance Plan and Medicaid if providing approved services authorized under the Contract that may be covered by those programs, and bill those plans for the covered services; (b) provide assistance to individuals to enroll in such programs when the screening process indicates possible eligibility for such programs; (c) allow clients that are otherwise eligible for Department services, but cannot pay a deductible required by a third party payor, to receive services up to the amount of the deductible and to bill the Department for the deductible; (d) not bill the Department for any services eligible for third party reimbursement until all appeals to third party payors have been exhausted; (e) maintain appropriate documentation from the third party payor reflecting attempts to obtain reimbursement; (f) bill all third party payors for services provided under this Contract before submitting any request for reimbursement to Department; and (g) provide third party billing functions at no cost to the client.

ARTICLE V TERMS AND CONDITIONS OF PAYMENT.

Section 5.01 **Prompt Payment.** Upon receipt of a timely, undisputed invoice pursuant to this Contract, Department will pay Contractor. Payments are contingent upon a signed Contract and will not exceed the total of authorized funds under this Contract. Contractor is entitled to payment only if the service, work, and/or product has been authorized by the Department and performed or provided pursuant to the Contract. If those conditions are met, Department will make payment in accordance with the Texas prompt payment law (TEX. GOV'T. CODE, Chapter 2251). Contractor must comply with TEX. GOV'T. CODE, Chapter 2251 regarding its prompt payment obligations to subcontractors. Payment of invoices by the Department shall not constitute acceptance or approval of Contractor's performance, and all invoices and Contractor's performance shall be subject to audit by the Department.

Section 5.02 **Withholding Payments.** Department may withhold all or part of any payments to Contractor to offset reimbursement for any ineligible expenditures or overpayments that Contractor has not refunded to Department, or if financial status report(s) required by the Department are not submitted by the date(s) due. Department may take repayment from funds available under this Contract, active or expired, in amounts necessary to fulfill Contractor's repayment obligations.

Section 5.03 **Acceptance as Payment in Full.** Contractor shall accept reimbursement or payment from DSHS as payment in full for services or goods provided to clients. Contractor agrees to not seek additional reimbursement or payment for services or goods from clients.

ARTICLE VI CONFIDENTIALITY.

Section 6.01 **Confidential Information.** Contractor is required to comply with state and federal laws relating to the privacy and confidentiality of patient and client records that contain protected health information (PHI), or other information or records made confidential by law.

Section 6.02 **Maintenance of Confidentiality.** Contractor must maintain the confidentiality of information received during the performance of this Contract, including PHI, and any other information that discloses confidential personal information or identifies any client served by DSHS, in accordance with applicable federal and state law and Rules, including but not limited to 7 CFR Part 246; 42 CFR Part 2, 45 CFR Parts 160 and 164; Health and Safety Code Chapters 12, 47, 81, 82, 85, 88, 92, 161, 181, 241, 245, 251, 534, 576, 577, 596, 611, and 773; and Occupations Code, Chapters 56 and 159 and all applicable Rules.

Section 6.03 **Use of PHI.** If Contractor is subject to HIPAA privacy regulations at 45 CFR Parts 160 and 164, Contractor may receive, use and disclose PHI, as defined in 45 CFR §164.501, only to carry out Contractor's duties under this Contract in accordance with the regulations. When using or disclosing PHI or when requesting PHI from another entity, Contractor must make reasonable efforts to limit the PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.

Section 6.04 **Disclosure to Department.** Contractor is required to disclose PHI of patients or clients provided services funded through this Contract and other confidential information to Department upon request, or as otherwise required in other contract provisions or laws governing the release of client records or other confidential information.

Section 6.05 **Department Access to PHI.** Contractor shall cooperate with Department to allow Department to request, collect and receive PHI under this Contract, without the consent of the individual to whom the PHI relates, for funding, payment and administration of the grant program. Contractor shall cooperate with Department to allow Department to request, collect and receive PHI under this Contract, without the consent of the individual to whom the PHI relates, under applicable state and federal confidentiality and privacy laws, including the Health Insurance Portability and Accountability Act (HIPAA) and the Privacy Standards adopted to implement HIPAA at 45 C.F.R. pts. 160 and 164, at § 164.512, and TEX. OCC. CODE ch. 159, at §§ 159.003 and 159.004.

Section 6.06 **Exchange of Client-Identifying Information.** Except as prohibited by other law, Contractor and DSHS shall exchange PHI without the consent of clients in accordance with 45 CFR § 164.504(e)(3)(i)(B), Health and Safety Code § 533.009 and Rule Chapter 414, Subchapter A or other applicable law or rules. Contractor shall disclose information described in Health and Safety Code § 614.017(a)(2) relating to special needs offenders, to an agency described in Health and Safety Code §614.017(c) upon request of that agency, unless Contractor documents that the information is not allowed to be disclosed under 45 CFR Part 164 or other applicable law.

Section 6.07 **Security of Patient or Client Records.** Contractor must ensure that patient

and client records are managed in compliance with state and federal law relating to security and retention of medical or mental health and substance abuse patient records. Department may require Contractor to transfer original or copies of patient and client records to Department, without the consent or authorization of the patient or client, upon termination of this Contract, or if the care and treatment of the individual patient or client is transferred to another entity. Prior to providing services funded under this Contract to a patient or client, Contractor shall attempt to obtain consent from the patient or client to transfer copies of patient or client records to another entity funded by DSHS upon termination of this Contract or if care or treatment is transferred to another DSHS-funded contractor.

Section 6.08 **HIV/AIDS Model Workplace Guidelines.** If providing direct client care, services, or programs, Contractor shall implement Department's policies based on the HIV/AIDS (human immunodeficiency virus/acquired immunodeficiency syndrome) Model Workplace Guidelines for Businesses, State Agencies, and State Contractors, policy No. 090.021, and Contractor shall educate employees and clients concerning HIV and its related conditions, including AIDS, in accordance with the TEX. HEALTH & SAFETY CODE § 85.112-114. A link to the Model Workplace Guidelines can be found on the Texas Department of Health legacy website at <http://www.tdh.state.tx.us/hivstd/policy/policy2.htm#top>.

ARTICLE VII RECORDS RETENTION.

Section 7.01 **Retention.** Contractor shall retain records in accordance with the Department's State of Texas Records Retention Schedule, located at <http://www.dshs.state.tx.us/records/schedules.shtm>, Department Rules and other applicable state and federal statutes and regulations governing medical, mental health, and substance abuse information. At a minimum Contractor shall retain and preserve all records, including financial records, which are generated or collected by Contractor under the provisions of this Contract, for a period of four (4) years after the termination of the Contract. If services are funded through Medicaid, the federal retention period, if more than four (4) years, shall apply. Contractor shall retain all records pertaining to this Contract that are the subject of litigation or an audit until the litigation has ended or all questions pertaining to the audit are resolved. Legal requirements for Contractor may extend beyond the retention schedules established in this section. Contractor shall retain medical records in accordance with Tex Admin Code Title 22, Part 9, §165.1(b) and (c) or other applicable statutes and regulations governing medical information. Contractor shall ensure that this provision concerning records retention is included in any subcontract it awards. If Contractor ceases business operations, it shall ensure that records relating to the Contract are securely stored and are accessible by the Department upon Department's request for at least four years from the date Contractor ceases business or from the termination date of the Contract, whichever is sooner. Contractor shall provide the name and address of the party responsible for storage of records to the Division Contract Management Unit assigned to the Contract.

Section 7.02 **Survival of Obligations.** The obligations of Contractor to retain records and maintain confidentiality of information shall survive this Contract.

ARTICLE VIII ACCESS AND INSPECTION.

Section 8.01 **Access.** In addition to any right of access arising by operation of law, Contractor, and any of Contractor's affiliate or subsidiary organizations or subcontractors

shall permit the Department or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, including the Office of the Inspector General at HHSC (OIG), and the State Auditor's Office (SAO), unrestricted access to and the right to examine any site where business is conducted and all records (including client and patient records, if any), books, papers or documents related to the Contract. If deemed necessary by the Department or the OIG, for the purpose of investigation or hearing, Contractor shall produce original documents related to the Contract. Further, Contractor will ensure that information collected, assembled or maintained by the Contractor relative to this Contract is available to the Department for the Department to respond to requests that it receives under the Public Information Act. The Department and HHSC will have the right to audit billings both before and after payment. Payments will not foreclose the right of Department and HHSC to recover excessive or illegal payments. Contractor will ensure that this provision concerning the right of access to, and examination of, information related to the Contract is included in any subcontract it awards.

Section 8.02 State Auditor's Office. Contractor shall, upon request, make all records, books, papers, documents, or recordings related to this Contract available for inspection, audit, or reproduction during normal business hours to any authorized representative of the Department. The Contractor understands that the acceptance of funds under this Contract acts as acceptance of the authority of the SAO, or any successor agency, to conduct an audit or investigation in connection with those funds. The Contractor further agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested, and providing access to any information the SAO considers relevant to the investigation or audit. Contractor will ensure that this provision concerning the authority to audit funds will apply to funds received indirectly by subcontractors through the Contractor, and the requirement to cooperate, is included in any subcontract it awards.

Section 8.03 Responding to Deficiencies. Any deficiencies identified by DSHS or HHSC upon examination of Contractor's records will be conveyed in writing to Contractor. Contractor will submit, by the date prescribed by DSHS, a resolution to the deficiency in a program review or management or financial audit to the satisfaction of DSHS. A DSHS or HHSC determination of either an inadequate or inappropriate resolution of the findings may result in contract remedies or sanctions under the Breach of Contract and Remedies for Non-Compliance Article of this Contract.

ARTICLE IX NOTICE REQUIREMENTS.

Section 9.01 Child Abuse Reporting Requirement. This section applies to mental health and substance abuse contractors and contractors for the following public health programs: HIV/STD; Family Planning (Titles X and XX); Primary Health Care; Maternal and Child Health; and Nutrition Services. Contractor shall make a good faith effort to comply with child abuse reporting guidelines and requirements in TEX. FAM. CODE ch. 261 relating to investigations of reports of child abuse and neglect. Contractor shall develop, implement and enforce a written policy that includes at a minimum the Department's Child Abuse Screening, Documenting, and Reporting Policy for Contractors/Providers and train all staff on reporting requirements. Contractor shall use the Checklist for Monitoring located at www.dshs.state.tx.us/childabusereporting as required by the Department. Contractor shall retain reporting documentation on site and make it available for inspection by DSHS.

Section 9.02 **Significant Incidents.** In addition to notifying the appropriate authorities, Contractor shall report to the Division Contract Management Unit assigned to the Contract incidents involving substantial disruption of program operation or potentially affecting Department funded clients or participants within seventy-two (72) hours of discovery.

Section 9.03 **Litigation.** Contractor shall notify the Division Contract Management Unit assigned to the Contract of litigation to which Contractor is a party within seven (7) calendar days of becoming aware of such a proceeding. This includes, but is not limited to an action, suit or proceeding before any court or governmental body, including environmental and civil rights matters, professional liability, and employee litigation. Notification shall include the names of the parties, nature of the litigation and remedy sought, including amount of damages, if any.

Section 9.04 **Action Against the Contractor.** Contractor shall notify the Division Contract Management Unit assigned to the Contract if Contractor has had a contract suspended or terminated by any local, state or federal department or agency or nonprofit entity. Such notification shall include the reason for such action that includes the name and contact information of the local, state or federal department or agency or entity, the date of the contract, and the contract or case reference number. If the Contractor, as an organization, has surrendered its license or has had its license suspended or revoked by any local, state or federal department or agency or non-profit entity, it shall disclose this information to the Department by submitting a one page description of the reason(s) for such action that includes the name and contact information of the local, state or federal department or agency, or entity, the date of the license action, and a license or case reference number.

Section 9.05 **Insolvency.** Contractor shall notify in writing the Division Contract Management Unit assigned to the Contract of Contractor's insolvency, incapacity, or outstanding unpaid obligations to the Internal Revenue Service (IRS) or Texas Workforce Commission (TWC) within three (3) working days of the date of determination that Contractor is insolvent, incapacitated, or the date Contractor discovered an unpaid obligation to the IRS or TWC. Contractor shall notify in writing the Division Contract Management Unit assigned to the Contract of its plan to seek bankruptcy protection within three (3) working days of such action by the Contractor's board of directors.

Section 9.06 **Misuse of Funds.** Contractor shall report to the Division Contract Management Unit assigned to the Contract and to the State Auditor's Office (SAO), any knowledge of debarment, suspected fraud, program abuse, possible illegal expenditures, unlawful activity, or violation of financial laws, rules, policies and procedures related to performance under this Contract. Contractor shall make such report no later than three (3) working days from the date of discovery. Contractor shall make the report to the SAO at (800) TX-AUDIT, or by Internet at <http://www.sao.state.tx.us>.

Section 9.07 **Criminal Activity and Disciplinary Action.** Contractor shall notify in writing the Division Contract Management Unit assigned to the Contract if it has reason to believe Contractor, or a person with ownership or controlling interest in the organization or who is an agent or managing employee of the organization, an employee or volunteer of Contractor, or a subcontractor has engaged in any activity that would constitute a criminal offense equal to or greater than a Class A misdemeanor or if such activity would reasonably

constitute grounds for disciplinary action by a state or federal regulatory authority, or has been placed on community supervision, received deferred adjudication, or been convicted of a criminal offense relating to involvement in any financial matter, federal or state program or felony sex crime. Contractor shall make the reports required by this section no later than three (3) working days from the date of discovery.

Section 9.08 **Retaliation Prohibited.** Contractor shall not retaliate against any person who reports a violation of, or cooperates with an investigation regarding, any applicable law, rule, or standard to the SAO, the Department, another state agency, or any federal, state or local law enforcement official.

Section 9.09 **Documentation.** Contractor shall maintain appropriate documentation of all notices.

ARTICLE X ASSURANCES AND CERTIFICATIONS.

Section 10.01 **Certification.** Contractor certifies by execution of this Contract to the following:

- a) it is not ineligible for participation in federal or state assistance programs;
- b) neither it, nor its principals, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or state department or agency;
- c) it has not knowingly failed to pay a single substantial debt or a number of outstanding debts to a federal or state agency;
- d) it is not subject to an outstanding judgment in a suit against Contractor for collection of the balance of a debt;
- e) it is in good standing with all state and/or federal agencies that have a contracting or regulatory relationship with Contractor; and
- f) that no person who has an ownership or controlling interest in Contractor or who is an agent or managing employee of Contractor has been convicted of a criminal offense related to involvement in any program established under Medicare, Medicaid, or a federal block grant.

Where Contractor is unable to certify to any of the statements in this Article, Contractor shall submit an explanation to the Division Contract Management Unit assigned to the Contract. If Contractor's status with respect to the items certified above changes during the Contract, Contractor shall immediately notify the Division Contract Management Unit assigned to the Contract.

Section 10.02 **Contracting with Executive Head of State Agency.** Contractor certifies that it is in compliance with TEX. GOV'T. CODE § 669.003, relating to contracting with the executive head of a state agency. If Contractor currently or subsequently employs a current or former executive head of DSHS, Texas Department of Health, Texas Department of Mental Health and Mental Retardation or Texas Commission on Alcohol and Drug Abuse, Contractor will submit the following information to the Division Contract Management Unit assigned to the Contract:

- (a) Name of Executive;

- (b) Name of State Agency;
- (c) Date of Separation from State Agency, if separated;
- (d) Date of Employment with Contractor; and
- (e) Other information as required by DSHS to verify Contractor's compliance with TEX. GOV'T. CODE § 669.003.

Section 10.03 **Child Support Delinquencies.** As required by TEX.FAM.CODE § 231.006, a child support obligor who is more than thirty (30) calendar days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least twenty-five percent (25%) is not eligible to receive payments from state funds under a contract to provide property, materials, or services or receive a state-funded grant or loan. If applicable, Contractor agrees to maintain its eligibility to receive payments under this Contract, certifies that it is not ineligible to receive the payments specified in this Contract, and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

Section 10.04 **Authorization.** Contractor certifies that it possesses legal authority to contract for the services set forth in this Contract and that a resolution, motion or similar action has been duly adopted or passed as an official act of the Contractor's governing body, authorizing the binding of the organization under this Contract including all understandings and assurances contained in this Contract, and directing and authorizing the person identified as the authorized representative of the Contractor to act in connection with the Contract and to provide such additional information as may be required.

Section 10.05 **Gifts and Benefits Prohibited.** Contractor certifies that it has not given, offered to give, nor intends to give at anytime hereafter, any economic opportunity, present or future employment, gift, loan, gratuity, special discount, trip, favor, or service to a DSHS or HHSC official or employee in connection with this Contract.

Section 10.06 **Ineligibility to Receive the Contract.** Pursuant to TEX. GOV'T. CODE Section § 2155.004, Contractor is ineligible to receive this Contract if the Contract includes financial participation by a person who received compensation from DSHS to participate in preparing the specifications or Solicitation Document on which this Contract is based. Contractor certifies that neither Contractor, nor its employees, nor anyone acting for the Contractor has received compensation from DSHS for participation in the preparation of specifications for this Contract or in the Solicitation Document on which this Contract is based. Contractor further certifies that the individual or business entity named in this Contract is not ineligible to receive the specified Contract. Contractor acknowledges that this Contract may be terminated and payment withheld if these certifications are inaccurate.

Section 10.07 **Antitrust.** Pursuant to 15 U.S.C.A. Sec. 1, et seq. and TEX. BUS. & COMM. CODE Section § 15.01, et seq. Contractor certifies that neither Contractor, nor anyone acting for the Contractor has violated the antitrust laws of this state or federal antitrust laws, nor communicated directly or indirectly regarding the bid made to any competitor or any other person engaged in such line of business for the purpose of substantially lessening competition in such line of business.

ARTICLE XI GENERAL BUSINESS OPERATIONS OF CONTRACTOR.

Section 11.01 **Duty of Compliance.** Contractor and its governing board, shall bear full responsibility for the integrity of the fiscal and programmatic management of the organization. This provision applies to all organizations, including Section 501(c)(3) organizations as defined in the Internal Revenue Service Code as not for-profit organizations. The responsibility of Contractor's governing board shall include: accountability for all funds and materials received from Department; compliance with Department Rules, policies, procedures, and applicable federal and state laws and regulations; and correction of fiscal and program deficiencies identified through self-evaluation and Department's monitoring processes. Further, Contractor's governing board shall ensure separation of powers, duties, and functions of board members and staff. Staff members, including the executive director, shall not serve as voting members of the Contractor's governing board. Ignorance of any Contract provisions or other requirements contained or referenced in this Contract shall not constitute a defense or basis for waiving or appealing such provisions or requirements.

Section 11.02 **Fidelity Bond.** Contractor is required to carry a fidelity bond or insurance coverage equal to the amount of funding provided under this Contract up to \$100,000 that covers each employee of Contractor handling funds under this Contract, including person(s) authorizing payment of such funds. The fidelity bond or insurance shall provide for indemnification of losses occasioned by: (1) any fraudulent or dishonest act or acts committed by any of Contractor's employees, either individually or in concert with others, and/or (2) failure of Contractor or any of its employees to perform faithfully his/her duties or to account properly for all monies and property received by virtue of his/her position or employment.

Section 11.03 **Liability Coverage.** Contractor shall also maintain liability insurance coverage, referred to in TEX. GOV'T. CODE § 2261.102, as "director and officer liability coverage," where Contractor is a legal entity that is required to have directors and/or officers. This provision applies to entities that are organized as non-profit corporations under the Texas Non-Profit Corporation Act; for-profit corporations organized under the Texas Business Corporations Act; and any other legal entity that is required under Texas law to have directors and/or officers. Contractor shall maintain liability insurance coverage in an amount not less than the total value of this Contract and that is sufficient to protect the interests of Department in the event an actionable act or omission by a director or officer of Contractor damages Department's interests.

Section 11.04 **Program Site.** All Contractors shall ensure that the location where services are provided is in compliance with all applicable local, state and federal zoning, building, health, fire, and safety standards.

Section 11.05 **Historically Underutilized Businesses (HUBs).** If Contractor was not required to submit a HUB subcontracting plan, Contractor is encouraged to make a good faith effort to consider subcontracting with HUBs as set forth in TEX. GOV'T CODE ch. 2161 and 1 TEX. ADM.CODE § 111.12. Contractors may obtain a list of HUBs at <http://www.tbpc.state.tx.us>. If Contractor has filed a HUB subcontracting plan, the plan is incorporated by reference in this Contract. If Contractor desires to make a change in the plan, Contractor must obtain prior approval of the revised plan from the Department's HUB

Coordinator before proposed changes will be effective under the Contract. Contractor agrees to make a good faith effort to subcontract with HUBs during the performance of its contract with Department and will report HUB subcontract activity to the Department's HUB Coordinator in accordance with 1 TEX. ADM CODE §111.16(c).

Section 11.06 **Buy Texas.** Contractor shall purchase products and materials produced in Texas when the products and materials are available at a price and time comparable to products and materials produced outside of Texas as required by TEX. GOV'T CODE § 2155.4441.

Section 11.07 **Status of Subcontractors.** Contractor shall require that all subcontractors certify that they are in good standing with all state and federal funding and regulatory agencies; are not currently debarred, suspended, revoked, or otherwise excluded from participation in federal grant programs; are not delinquent on any repayment agreements; and have not had a contract terminated by the Department. Contractors shall further require that subcontractors certify that they have not voluntarily surrendered within the past three (3) years any license issued by the Department.

Section 11.08 **Incorporation of Terms.** Contractor shall ensure that all written agreements with the subcontractor incorporate the terms of this Contract, and provide that the subcontractor is subject to audit by DSHS, HHSC and the SAO.

Section 11.09 **Independent Contractor.** Contractor is an independent Contractor. Contractor shall direct and be responsible for the performance of its employees, subcontractors, joint venture participants or agents. Contractor is not an agent or employee of the Department or the State of Texas for any purpose whatsoever. For purposes of this Contract, Contractor acknowledges that its employees, subcontractors, joint venture participants or agents will not be eligible for unemployment compensation from the Department or the State of Texas.

Section 11.10 **Authority to Bind.** The person or persons signing and executing this Contract on behalf of Contractor, or representing themselves as signing and executing this Contract on behalf of Contractor, warrant and guarantee that they have been duly authorized by Contractor to execute this Contract for Contractor and to validly and legally bind Contractor to all of its terms.

Section 11.11 **Tax Liability.** Contractor shall comply with all state and federal tax laws and is solely responsible for filing all required state and federal tax forms and making all tax payments. In the event that the Department discovers that Contractor has a delinquent liability or has failed to remain current on a delinquent liability to the IRS, the Contract will be subject to immediate termination at the Department's discretion. In the event of Contract termination under this section, the Department will not enter into a Contract with Contractor for three (3) years from the date of termination. In addition to other remedies, the Department has the right to place the Contract on high risk status in response to Contractor's liability to the IRS for any amount.

Section 11.12 **Notice of Organizational Change.** Contractor shall submit written notice to the Division Contract Management Unit assigned to the Contract within ten business days

of any change to the following: Contractor's name; contact information; key personnel, officer, director or partner; organizational structure; legal standing; or authority to do business in Texas. A change in Contractor's name requires an amendment to the Contract in accordance with the Amendments section of these General Provisions.

Section 11.13 **Quality Management.** Contractor shall comply with quality management requirements as directed by the Department.

ARTICLE XII GENERAL TERMS.

Section 12.01 **Assignment.** Contractor will not transfer, assign, or sell its interest, in whole or in part, in this Contract, or in any equipment purchased with funds from this Contract, without the prior written consent of the Department.

Section 12.02 **Lobbying.** Contractor shall not use funds granted under this Contract to pay any person for influencing or attempting to influence an officer or employee of any agency, federal or state, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any contract or the extension, continuation, renewal, amendment, or modification of any contract (31 U.S.C.A. § 1352, as amended, and UGMS). If at any time this Contract exceeds \$100,000 of federal funds, Contractor shall file with the Division Contract Management Unit assigned to the Contract a declaration containing the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of Contractor in connection with the Contract, a certification that none of the funds provided by Department have been or will be used for payment to lobbyists, and disclosure of the names of any and all registered lobbyists with whom Contractor has an agreement. Contractor shall require any person who requests or receives a subcontract to file the same declaration, certification, and disclosure with the Division Contract Management Unit assigned to the Contract. Contractor shall file the declaration, certification, and disclosure at the time of application for the contract; upon execution of a contract unless Contractor previously filed a declaration, certification, or disclosure form in connection with the award; and at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any declaration, certification, or disclosure previously filed.

Section 12.03 **Conflict of Interest.** Contractor represents to the Department that it does not have nor shall it knowingly acquire any interest that would conflict in any manner with the performance of its obligations under this Contract. Potential conflicts of interest include, but are not limited to, an existing or potential business or personal relationship between Contractor, its principal, or any affiliate or subcontractor with Department or HHSC, their commissioners, officers or employees, or any other entity or person involved in any way in any project that is the subject of this Contract. Contractor shall establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.

Section 12.04 **Transactions Between Related Parties.** Contractor shall identify and report to DSHS any transaction between the Contractor and a related party that is part of the work that the Department is purchasing under this Contract before entering into the transaction or

immediately upon discovery. Contractor shall submit to the Division Contract Management Unit assigned to the Contract the name, address and telephone number of the related party, how the party is related to the Contractor and the work the related party will perform under the Contract. A related party is a person or entity related to the Contractor by blood or marriage, common ownership or any association that permits either to significantly influence or direct the actions or policies of the other. The Contractor, for purposes of reporting transactions between related parties, includes the entity contracting with the Department under this Contract as well as the chief executive officer, chief financial officer and program director of the Contractor. Contractor shall comply with TEX. GOV'T CODE ch. 573. Contractor shall maintain records and supply any additional information requested by the Department, regarding a transaction between related parties, needed to enable the Department to determine the appropriateness of the transaction pursuant to applicable state or federal law, regulations or circulars, which may include 45 C.F.R. part 74, OMB Circ. No. A-110 (Rev. 11/19/93, as further amended 09/30/99), 2 CFR §215.42, and UGMS.

Section 12.05 **Intellectual Property.** Texas Health and Safety Code §12.020 authorizes DSHS to protect intellectual property developed as a result of this Contract.

- (a) "Intellectual property" means created property that may be protected under copyright, patent, or trademark/service mark law.
- (b) For purposes of this Contract "work made for hire" is intellectual property prepared for DSHS use, or a work specially ordered or commissioned through a contract for DSHS use. DSHS owns works made for hire unless it agrees otherwise by contract
- (c) If federal funds are used to finance activities supported by this Contract that result in the production of intellectual property, the federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal government purposes (1) the copyright in any intellectual property developed under this Contract including any subcontract and (2) any rights of copyright to which a Contractor purchases ownership with contract funds. Contractor shall place an acknowledgment of federal awarding agency grant support and a disclaimer, as appropriate, on any publication written or published with such support and, if feasible, on any publication reporting the results of or describing a grant-supported activity. An acknowledgment shall be to the effect that "This publication was made possible by grant number _____ from (federal awarding agency)" or "The project described was supported by grant number _____ from (federal awarding agency)" and "Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the (federal awarding agency)."
- (d) In the event the terms of a federal grant award the copyright to Contractor, DSHS reserves a royalty-free, nonexclusive, worldwide and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for DSHS, public health, and state governmental noncommercial purposes (1) the copyright, trademark, service mark, and/or patent on an invention, discovery, or improvement to any process, machine, manufacture, or composition of matter; products; technology; scientific information; trade secrets; and computer software, in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (2)

any rights of copyright, service or trade marks or patents to which a grantee, subgrantee or a Contractor purchases ownership with contract funds.

(e) If the results of the contract performance are subject to copyright law, the Contractor cannot publish those results without prior review and approval of DSHS. Contractor shall submit requests for review and approval to the Division Contract Management Unit assigned to the Contract.

Section 12.06 **Other Intangible Property.** At the conclusion of the contractual relationship between Department and the Contractor, for any reason, Department shall have the sole ownership rights and interest in all non-copyrightable intangible property that was developed, produced or obtained by Contractor as a specific requirement under the Contract or under any grant that funds this Contract, such as domain names, URLs, etc. Contractor shall cooperate with Department and perform all actions necessary to transfer ownership of such property to the Department or its designee, or otherwise affirm Department's ownership rights and interest in such property. This provision shall survive the termination or expiration of the Contract.

Section 12.07 **Severability and Ambiguity.** If any provision of this Contract is construed to be illegal or invalid, the illegal or invalid provision will be deemed stricken and deleted to the same extent and effect as if never incorporated, but all other provisions will continue. Parties represent and agree that the language contained in this Contract is to be construed as jointly drafted, proposed and accepted.

Section 12.08 **Legal Notice.** Any notice required or permitted to be given by the provisions of this Contract shall be deemed to have been received by a Party on the third business day after the date on which it was mailed to the Party at the address first given above (or at such other address as the Party shall specify to the other Party in writing) or, if sent by certified mail, on the date of receipt.

Section 12.09 **Successors.** The Contract shall be binding upon the Parties and their successors and assignees, except as expressly provided in this Contract.

Section 12.10 **Headings.** The articles and section headings used in the Contract are for convenience of reference only and shall not be construed in any way to define, limit or describe the scope or intent of any provisions.

Section 12.11 **Parties.** The Parties represent to each other that they are entities fully familiar with transactions of the kind reflected by this document, and are capable of understanding the terminology and meaning of its terms and conditions and of obtaining independent legal advice pertaining to this Contract.

Section 12.12 **Survivability of Terms.** Termination or expiration of this Contract for any reason shall not release either party from any liabilities or obligations set forth in this Contract that (a) the parties have expressly agreed shall survive any such termination or expiration, or (b) remain to be performed or (c) by their nature would be intended to be applicable following any such termination or expiration.

Section 12.13 **Customer Service Information.** If requested, Contractor shall supply such

information as required by the Department to comply with the provisions of TEX. GOV'T CODE ch. 2114 regarding Customer Service surveys.

Section 12.14 **Amendment.** Parties agree that the Department may reduce funds pursuant to the terms of this Contract. Unless otherwise specified in these General Provisions, all other amendments to this Contract must be in writing and agreed to by both Parties. Contractor's request for certain budget revisions or other amendments must be submitted in writing, including a justification for the request, to the Division Contract Management Unit assigned to the Contract; and if a budget revision or amendment is requested during the last quarter of the Contract term, Contractor's written justification must include a reason for the delay in making the request. Revision or amendment requests may be granted at the discretion of DSHS.

Section 12.15 **Contractor's Notification of Change to Certain Contract Provisions.** The following changes may be made to the Contract without the Department's prior approval:

- 1) Contractor's contact person and contact information.
- 2) Contact information for key personnel, as stated in the application.
- 3) Cumulative budget line item transfers that exceed 10% among direct cost categories other than the equipment category, of cost reimbursement contracts of less than \$100,000, provided that the total budget amount is unchanged.
- 4) Minor corrections or clarifications to the Contract language that in no way alter the Contract scope of work, objectives or performance measures.
- 5) A change in the Contractor's share of the budget via program income or match, regardless of the amount of the change.

Contractor within ten days shall notify in writing the Division Contract Management Unit assigned to the Contract of any change enumerated in this section. The notification may be by letter, fax or email.

Section 12.16 **Contractor's Request for Revision of Certain Contract Provisions.** Contractor may request a revision of the following provisions of the Contract:

- 1) Cumulative budget line item transfers among direct cost categories that exceed 10% of cost reimbursement contracts of \$100,000 or more, provided that the total budget amount is unchanged.
- 2) Line item transfer of funds for direct payment of training allowances for any cost reimbursement contract.
- 3) Change in clinic hours or location.
- 4) Change in equipment list substituting an item of equipment equivalent to an item of equipment on the approved budget.
- 5) Changes in the equipment category of a previously approved equipment budget (other than acquisition of additional equipment, which requires an amendment to the Contract).
- 6) Changes specified in applicable cost principles as requiring prior approval, regardless of dollar threshold.

In order to request a revision of any of the enumerated provisions, Contractor shall obtain a Contract Revision Request form from the DSHS website and complete the form as directed by the Department. Two copies of the completed form must be signed by Contractor's

representative who is authorized to sign contracts on behalf of Contractor and submitted to the Division Contract Management Unit assigned to the Contract. Any approved revision will not be effective unless signed by the DSHS Director of Client Services Contracting Unit. Circumstances of a requested contract revision may indicate the need for a Contract amendment with written justification rather than a contract revision.

Section 12.17 **Immunity Not Waived.** THE PARTIES EXPRESSLY AGREE THAT NO PROVISION OF THIS CONTRACT IS IN ANY WAY INTENDED TO CONSTITUTE A WAIVER BY DEPARTMENT OR THE STATE OF TEXAS OF ANY IMMUNITIES FROM SUIT OR FROM LIABILITY THAT DEPARTMENT OR THE STATE OF TEXAS MAY HAVE BY OPERATION OF LAW.

Section 12.18 **Hold Harmless.** Contractor, as an independent contractor, agrees to hold Department, the State of Texas, individual state employees and officers, and the federal government harmless and to indemnify them from any and all liability, suits, claims, losses, damages and judgments, and to pay all costs, fees, and damages to the extent that such costs, fees, and damages arise from performance or nonperformance of Contractor, its employees, subcontractors, joint venture participants or agents under this Contract.

Section 12.19 **Waiver.** Acceptance by either party of partial performance or failure to complain of any action, non-action or default under this Contract shall not constitute a waiver of either party's rights under the Contract.

ARTICLE XIII BREACH OF CONTRACT AND REMEDIES FOR NON-COMPLIANCE.

Section 13.01 **Actions Constituting Breach of Contract.** Actions or inactions that constitute breach of contract include, but are not limited to, the following:

- a) failure to properly provide the services and/or goods purchased under this Contract;
- b) failure to comply with any provision of this Contract;
- c) failure to pay refunds or penalties owed to the Department;
- d) failure to comply with a repayment agreement with Department or agreed order issued by the Department;
- e) failure by Contractor to provide a full accounting of funds expended under this Contract;
- f) discovery of a material misrepresentation in any aspect of Contractor's response to the Solicitation Document; or
- g) any misrepresentation in the assurances and certifications in the Contractor's application or response to the Solicitation Document or in this Contract.

Section 13.02 **General Remedies and Sanctions.** The Department will monitor Contractor for both programmatic and financial compliance. The remedies set forth below are available to the Department against Contractor and any entity that subcontracts with Contractor for provision of services or goods. HHSC OIG may investigate, audit and impose or recommend imposition of sanctions to Department for any breach of this Contract and may monitor Contractor for financial compliance. The Department may impose one or more sanctions for

each item of noncompliance and will determine sanctions on a case-by-case basis. Contractor is responsible for complying with all of the terms of this Contract. The listing of or use of one or more of the remedies listed below does not relieve Contractor of any obligations under the Contract. A state or federal statute, rule or regulation, or federal guideline will prevail over the provisions of this Article unless the statute, rule, regulation, or guideline can be read together with the provision(s) of this Article to give effect to both. If the Contractor breaches this Contract by failing to comply with one or more of the terms of this Contract, including but not limited to compliance with applicable statutes, rules or regulations, the Department may take one or more of the actions listed below:

- a) terminate the Contract or a Program Attachment of the Contract as it relates to a specific program type. In the case of termination, the Department will inform Contractor of the termination no less than thirty-one (31) calendar days before the effective date of the termination in a notice of termination. The notice of termination will state the effective date of the termination, the reasons for the termination, and, if applicable, alert the Contractor of the opportunity to request a hearing on the termination pursuant to TEX. GOV'T CODE ch. 2105 regarding administration of Block Grants. The Contractor agrees that it shall not make any claim for payment or reimbursement for services provided from the effective date termination;
- b) suspend all or part of this Contract. Suspension is, depending on the context, either (1) the temporary withdrawal of Contractor's authority to obligate funds pending corrective action by Contractor or its subcontractor(s) or pending a decision to terminate or amend the Contract, or (2) an action taken by a suspending official in accordance with Department rules to immediately exclude a person from participating in contract transactions for a period of time, pending completion of an investigation and such legal or debarment proceedings as may ensue. Contractor costs resulting from obligations incurred by Contractor during a suspension are not allowable unless expressly authorized by the notice of suspension;
- c) deny additional or future contracts or renewals with Contractor;
- d) reduce funding if the Contractor fails to provide services or goods consistent with performance expectations described in the Contract;
- e) disallow (deny both use of funds and matching credit for) all or part of the activities or action not in compliance;
- g) temporarily withhold cash payments. Temporarily withholding cash payments means the temporary withholding of a working capital advance, if applicable, or reimbursements or payments to Contractor for proper charges or obligations incurred, pending resolution of issues of noncompliance with conditions of this Contract or indebtedness to the United States or to the State of Texas;
- h) permanently withhold cash payments. Permanent withholding of cash payment means that Department retains funds billed by Contractor for (1) unallowable, undocumented, disputed, inaccurate, improper, or erroneous billings; (2) material failure to comply with Contract provisions; or (3) indebtedness to the United States or to the State of Texas;
- i) declare the Contract void upon the Department's determination that the

Contract was obtained fraudulently or upon the Department's determination that the Contract was illegal or invalid from the Contract's inception;

- j) designate the Contractor as high risk;
- k) request that Contractor be removed from the centralized Master Bidders List (CMBL) or any other state bid list, and bar it from participating in future contracting opportunities with the State of Texas;
- l) delay contract execution with Contractor while other imposed or proposed sanctions are pending resolution;
- m) place Contractor on probation. Probation means that Contractor will be placed on accelerated monitoring for a period not to exceed six (6) months at which time items of noncompliance must be resolved or substantial improvement shown by Contractor. Accelerated monitoring means more frequent or more extensive monitoring will be performed by Department than would routinely be accomplished;
- n) require Contractor to obtain technical or managerial assistance;
- o) establish additional prior approvals for expenditure of funds by Contractor;
- p) require additional, more detailed, financial and/or programmatic reports to be submitted by Contractor;
- q) demand repayment from Contractor;
- r) reduce the funding amount for failure to achieve or maintain the proposed level of service, to expend funds appropriately and at a rate which will make full use of the award, or to provide services or to achieve local match, if required;
- s) pursue a claim for damages as a result of breach of contract;
- s) require removal of any officer or employee of the Contractor who has been convicted of the misuse of state or federal funds, fraud or illegal acts that are in contraindication to continued obligations under this Contract, as determined by DSHS;
- t) withhold any payments to Contractor to satisfy any recoupment or penalty imposed by DSHS, and take repayment from funds available under this Contract, active or expired, in amounts necessary to fulfill Contractor's repayment obligations;
- u) reduce the Contract term;
- v) recoup improper payments when it is verified that the Contractor has been overpaid because of improper billing or accounting practices or failure to comply with Contract terms; or
- w) impose other remedies provided by law.

Section 13.03 Notice of Sanctions. Department will formally notify Contractor in writing when a sanction is imposed (with the exception of accelerated monitoring, which may be unannounced), stating the nature of the sanction(s), the reasons for imposing them, the corrective actions, if any, that must be taken before the actions will be removed and the time allowed for completing the corrective actions, and the method, if any, of requesting reconsideration of the sanctions imposed. Contractor is required to file, within fifteen (15) calendar days of receipt of notice, a written response to Department acknowledging receipt of such notice. If requested by the Department, the written response shall state how Contractor

shall correct the noncompliance or demonstrate in writing that the findings on which the sanctions are based are either invalid or do not warrant the sanction(s). If Department determines that a sanction is warranted, unless the sanction is subject to review under a federal or state statute, regulation or guideline, Department's decision is final. Department shall provide written notice to Contractor of Department's final decision. If required by the Department, Contractor shall take corrective action.

Section 13.04 **Emergency Action.** In an emergency, Department may immediately terminate or suspend all or part of this Contract, temporarily or permanently withhold cash payments, deny contract renewal or future contract awards, or delay contract execution by delivering written notice to Contractor, by any verifiable method, stating the reason for the emergency action. An "emergency" is defined as the following:

- a) Contractor is noncompliant and the noncompliance has a direct adverse impact on the public or client health, welfare or safety. The direct adverse impact may be programmatic or financial and may include failing to provide services; providing inadequate services; providing unnecessary services; or utilizing resources so that the public or clients do not receive the benefits contemplated by the scope of work or performance measures; or
- b) Contractor is expending funds inappropriately.

Whether Contractor's conduct or noncompliance is an emergency will be determined by Department on a case-by-case basis and will be based upon the nature of the noncompliance or conduct.

ARTICLE XIV CLAIMS AGAINST THE DEPARTMENT.

Section 14.01 **Breach of Contract Claim.** The process for a breach of contract claim against the Department provided for in Chapter 2260 of Texas Government Code and implemented in the rules at 25 TAC §§1.431-1.447 shall be used by DSHS and Contractor to attempt to resolve any claim for breach of contract made by DSHS.

Section 14.02 **Notice.** Contractor's claims for breach of this Contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, Texas Government Code. To initiate the process, Contractor shall submit written notice, as required by subchapter B, to DSHS's Office of General Counsel. The notice shall specifically state that the provisions of Chapter 2260, subchapter B, are being invoked. A copy of the notice shall also be given to all other representatives of DSHS and Contractor. Subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, Texas Government Code.

Section 14.03 **Sole Remedy.** The contested case process provided in Chapter 2260, subchapter C, Texas Government Code, is Contractor's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by DSHS if the parties are unable to resolve their disputes under this Article.

Section 14.04 **Condition Precedent to Suit.** Compliance with the contested case process provided in Chapter 2260, subchapter C, Texas Government Code, is a condition

precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this Contract by DSHS nor any other conduct of any representative of DSHS relating to this Contract shall be considered a waiver of sovereign immunity to suit.

Section 14.05 **Performance Not Suspended.** Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by Contractor, in whole or in part.

ARTICLE XV TERMINATION.

Section 15.01 **Expiration of Contract or Program Attachment(s).** Contractor's service obligations set forth in each Program Attachment shall end upon the expiration date of that Program Attachment unless extended or renewed by written amendment. Prior to completion of the term of all Program Attachments, all or a part of this Contract may be terminated with or without cause as set forth below.

Section 15.02 **Effect of Termination.** Termination is the permanent withdrawal of Contractor's authority to obligate previously awarded funds before that authority would otherwise expire or the voluntary relinquishment by Contractor of the authority to obligate previously awarded funds. Contractor costs resulting from obligations incurred by Contractor after termination of an award are not allowable unless expressly authorized by the notice of termination. Upon termination of this Contract, Contractor shall cooperate with DSHS to the fullest extent possible to ensure the orderly and safe transfer of responsibilities under the Contract to DSHS or other entity designated by DSHS. Upon termination of all or part of this Contract, Department and Contractor will be discharged from any further obligation created under the applicable terms of this Contract except for the equitable settlement of the respective accrued interests or obligations incurred prior to termination and for Contractor's duty to cooperate with DSHS. Termination does not, however, constitute a waiver of any remedies for breach of this Contract. In addition, Contractor's obligations to retain records and maintain confidentiality of information shall survive this Contract.

Section 15.03 **Acts Not Constituting Termination.** Termination does not include: (1) withdrawal of funds awarded on the basis of the Contractor's underestimate of the unobligated balance in a prior period; (2) withdrawal of the unobligated balance at the expiration of the term of a Program Attachment; (3) refusal to extend a Program Attachment or award additional funds to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a contract upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Section 15.04 **Termination Without Cause.**

- a) Either Party may terminate this Contract with at least thirty (30) calendar days prior written notice to the other Party, except that if Contractor seeks to terminate a Contract that involves residential client services, Contractor must give the Department at least ninety (90) calendar days prior written notice and must submit a transition plan to ensure client services are not disrupted.
- b) The Parties may terminate this Contract by mutual agreement.
- c) Either Party may terminate this Contract with at least thirty (30) calendar days

prior written notice to the other Party in the event state and/or federal funding for this Contract is terminated, limited, suspended, withdrawn, or discontinued.

d) Department may terminate this Contract immediately when, in the sole determination of Department, termination is in the best interest of the State of Texas.

Section 15.05 **Termination For Cause.** Either Party may terminate for material breach of this Contract with at least thirty (30) calendar days written notice to the other Party. Department may terminate this Contract, in whole or in part, for breach of contract or for any other conduct that jeopardizes the Contract objectives, by giving at least thirty (30) calendar days written notice to Contractor. Such conduct may include one or more of the following:

(a) a court of competent jurisdiction finds that Contractor has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction;

(b) Contractor fails to communicate with Department or fails to allow its employees or those of its subcontractor to communicate with Department as necessary to the performance of this Contract;

(c) Contractor breaches a standard of confidentiality with respect to the services provided under this Contract;

(d) Department determines that Contractor is without sufficient personnel or resources to perform under this Contract or that Contractor is otherwise unable or unwilling to fulfill any of its requirements under the Contract or exercise adequate control over expenditures or assets;

(e) Department determines that Contractor, its agent or another representative offered or gave a gratuity (e.g., entertainment or gift) to an official or employee of DSHS or HHSC for the purpose of obtaining a contract or favorable treatment;

(f) Department determines that the Contract includes financial participation by a person who received compensation from DSHS to participate in preparing the specifications or Solicitation Document on which this Contract is based in violation of Gov. Code §2155.004; or

(g) Contractor appears to be financially unstable. Indicators of financial instability may include one or more of the following:

1. Contractor fails to make payments;

2. Contractor makes an assignment for the benefit of its creditors;

3. Contractor admits in writing its inability to pay its debts generally as they become due;

4. if judgment for the payment of money in excess of \$50,000 (which is not covered by insurance) is rendered by any court or governmental body against Contractor, and Contractor does not (a) discharge the judgment or (b) provide for its discharge in accordance with its terms, or (c) procure a stay of execution within thirty (30) calendar days from the date of entry of the judgment, and within the thirty (30)-day period or a longer period during which

execution of the judgment has been stayed, appeal from the judgment and cause the execution to be stayed during such appeal while providing such reserves for the judgment as may be required under generally accepted accounting principles;

5. a writ or warrant of attachment or any similar process shall be issued by any court against all or any material portion of the property of Contractor, and such writ or warrant of attachment or any similar process is not released or bonded within thirty (30) calendar days after its entry;

6. Contractor is adjudicated bankrupt or insolvent;

7. Contractor files a case under the Federal Bankruptcy Code or seeks relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any case or petition against it under any such law;

8. any property or portion of the property of Contractor is sequestered by court order and the order remains in effect for more than thirty (30) calendar days after Contractor obtains knowledge thereof;

9. a petition is filed against Contractor under any state reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership or liquidation law of any jurisdiction, whether now or hereafter in effect, and such petition is not dismissed within thirty (30) calendar days; or

10. Contractor consents to the appointment of a receiver, trustee, or liquidator of Contractor or of all or any part of its property.

Section 15.06 **Notice of Termination.** Either Party may deliver written notice of intent to terminate by any verifiable method. If either Party gives notice of its intent to terminate all or a part of this Contract, Department and Contractor will attempt to resolve any issues related to the anticipated termination in good faith during the notice period.

ARTICLE XVI VOID, SUSPENDED, AND TERMINATED CONTRACTS.

Section 16.01 **Void Contracts.** Department may hold this Contract void upon determination that the award was obtained fraudulently or was otherwise illegal or invalid from its inception.

Section 16.02 **Effect of Void, Suspended, or Involuntarily Terminated Contract.** A Contractor who has been a party to a contract with DSHS that has been found to be void, suspended, or terminated for cause is not eligible for expansion of current contracts, if any, or new contracts or renewals until the Department has determined that Contractor has satisfactorily resolved the issues underlying the suspension or termination. Additionally, if this Contract is found to be void, any amount paid is subject to refund.

Section 16.03 **Appeals Rights.** Pursuant to Gov. Code §2105.302, after receiving notice from the Department of termination of a contract with DSHS funded by block grant funds, Contractor may request an administrative hearing under Gov. Code Chapter 2001.

ARTICLE XVII CLOSEOUT AND CONTRACT RECONCILIATION

Section 17.01 **Cessation of Services At Closeout.** Upon expiration of the Contract (and any renewals of the Contract) on its own terms, Contractor shall cease services under the Contract and shall cooperate with DSHS to the fullest extent possible to ensure the orderly and safe transfer of responsibilities under the Contract to DSHS or other entity designated by DSHS. Upon receiving notice of Contract termination or non-renewal of the Contract, the Contractor agrees to immediately begin to transition recipients of services to alternative service providers, as needed. Contractor also agrees to completely cease providing services under the Contract by the date specified in the Contract termination or non-renewal notice. Contractor shall not incur any additional expenses once the Contract is terminated or has expired. Upon termination, expiration or non-renewal of this Contract, Contractor shall immediately initiate closeout activities described in this Article.

Section 17.02 **Administrative Offset.** The Department shall have the right to administratively offset amounts owed by Contractor against billings.

Section 17.03 **Deadline for Closeout.** Contractor shall submit all financial, performance, and other closeout reports required under the Contract within sixty (60) calendar days after the Contract end date. Unless otherwise provided under the Billing Submission section of the Payment Methods and Restrictions Article, the Department is not liable for any claims that are not received within sixty (60) calendar days after the Contract end date.

Section 17.04 **Payment of Refunds.** Any funds paid to the Contractor in excess of the amount to which the Contractor is finally determined to be entitled under the terms of the Contract constitute a debt to the Department and will result in a refund due. Contractor shall pay any refund amount due within the time period established by the Department.

Section 17.05 **Disallowances and Adjustments.** The closeout of the Contract does not affect the Department's right to disallow costs and recover funds on the basis of a later audit or other review or the Contractor's obligation to return any funds due as a result of later refunds, corrections, or other transactions.

Section 17.06 **Contract Reconciliation.** If Contractor is required to annually reconcile multi-year contracts, Contractor, within 60 calendar days after the end of each year of the contract, shall submit to the Division Contract Management Unit assigned to the Contract all financial and reconciliation reports required by Department in forms as determined by Department. Required reconciliation forms and reports may include the following: Cash Match Participation Form, In-kind Match Participation Form, Program Income Report, Equipment Inventory, Controlled Items Inventory, Contractor's Release Agreement, and Reconciliation Refund Remittance Form. Any additional forms or reports required by Department shall be posted on the DSHS website prior to the reconciliation period. Unless otherwise directed by Department, all forms and reports must be submitted in hard copies, with original signatures if required, to DSHS by the due date.